

Other Information

25.1 MEMORANDUM RESPECTING ADMINISTRATIVE ARRANGEMENTS

MEMORANDUM RESPECTING ADMINISTRATIVE ARRANGEMENTS

The Commission des opérations de bourse (COB), and the Ontario securities commission (OSC) ;

Considering, in light of the increasing international activity in the securities, futures and option markets, the need for mutual cooperation and consultation in order to facilitate the performance of their functions in the matters mentioned hereinafter ;

Considering the importance of ensuring compliance with and enforcement of the corresponding laws and regulations of France and Ontario ;

Willing therefore to establish the fullest mutual assistance, while preserving defence rights, in order to facilitate the performance of the functions they are entrusted with in France and in Ontario to enforce or secure compliance with any law or regulation, as that term is defined herein ;

Have reached the following understanding :

Article 1 : Purpose of the Memorandum

The purpose of this Memorandum is to establish a system for mutual assistance between the Authorities designated hereinafter, in order to facilitate the performance of the functions they are entrusted with in France and in Ontario and to enforce or secure compliance by all markets participants with the laws and regulations governing market procedures and organization, including :

(1) to prohibit and provide sanction against the abusive use of confidential information and other manipulative market practices ;

(2) to protect the rights of investors to obtain timely and accurate information regarding securities and the issuers of these securities ;

(3) to ensure compliance by all securities, futures, options and investment professionals with the laws and regulations governing their profession and their operations on the stock, futures and option markets, including laws and regulations concerning the transmission and execution of orders, the management, provision of advice concerning, or trading of individual or collective portfolios or accounts of securities.

Article 2 : Definitions

For the purpose of this Memorandum :

1. "Authority" means :
 - (a) the Commission des opérations de bourse of France
 - (b) the Ontario securities commission ;
2. "requested Authority" means the Authority to whom a request under this Memorandum is made ;
3. "requesting Authority" means an Authority making a request under this Memorandum ;
4. "person" means a natural person, legal entity, partnership or unincorporated association ;
5. "security" means :
 - (a) any share, stock, bond, note, debenture or any instrument similar to shares, stocks, bonds, notes, debentures ;
 - (b) any contract or right giving the right to subscribe, buy or sell any instrument mentioned in (a) ;
 - (c) any futures contract, option contract, or any financial instrument based on instruments mentioned in (a) ;
 - (d) any index contract based on instruments mentioned in (a) ;
 - (e) any commodity futures contract or any commodity futures option contract ;
6. "issuer" means a person who issues or proposes to issue any security ;
7. "markets" means all the transactions made for the purchase and sale of securities, futures or option contracts, including transactions made on the primary market ;
8. "investor" means a person who has, holds or places an order to obtain, a beneficial interest in securities ;
9. "professionals carrying out operations on the markets" means :
 - (a) any person who engages in the business of purchasing, selling, distributing, transferring, clearing or settling securities ; receiving and keeping securities in deposit ; collecting, executing or transmitting orders given by investors concerning the purchase or sale of securities ; engaging for his own account, or for the accounts of investors, in the management of individual or collective securities portfolios or accounts ; or advising others in these matters ; and
 - (b) any person who is associated with another person who performs any function listed in subparagraph (a) including, without limitation, an employee or authorized representative ;
10. "laws and regulations" means provisions of the laws and regulations or any rule or policy applicable in France and in Ontario with respect to markets.

Article 3 : Scope of Assistance

1. The Authorities will provide each other the fullest assistance under this Memorandum, in accordance with the laws of France, as for the COB, and of Ontario, as for the OSC, in order to facilitate the exchange of information between such Authorities relating to facts in connection with market oversight or with investigations to determine whether any person has violated the laws or regulations of France, where the requesting Authority is the COB, and of Ontario, where the requesting Authority is the OSC. For that purpose, they will :

- (a) provide access to information in their files ;
- (b) take the evidence of persons ; and
- (c) obtain documents from persons.

2. In order to comply with any request for assistance made pursuant to this Memorandum, the requested Authority will use all its powers and means according to procedures provided under the laws of France, where the requested Authority is the COB, and of Ontario, where the requested Authority is the OSC.

Where the requested Authority does not possess the legal authority to provide the assistance requested, the requested Authority shall consult with the requesting Authority about alternative means of addressing the request.

Article 4 : General Principles

1. Each Authority agrees that this Memorandum represents the preferred way of obtaining the confidential information necessary to ensure compliance with or enforcement of the laws and regulations of France and Ontario. However, it does not prohibit either Authority from taking other measures aiming at the same purpose, to the extent permitted by international law. Before resorting to such other measures, the Authority seeking the information must first make a request for assistance pursuant to this Memorandum and notify the requested Authority that it intends to resort to such other measures. The Authority requesting assistance shall consult, if so requested by the requested Authority, concerning how such measures may affect the interests of the requested Authority.

2. No provision of this Memorandum may be construed as conferring the right to ask for or challenge the execution of a request for assistance upon any person or any authority other than the Authorities defined in Article 2 (1).

Where the requesting Authority makes a request for assistance on behalf of a self regulatory organization, the Authorities shall consult in order to determine the precise content of the information to be given by the requested Authority.

3. Assistance under this Memorandum may be denied by the requested Authority :

- (a) where the execution of the request would prejudice the sovereignty or performances of the respective functions of each Authority, the security, fundamental economic interests, or public policy or interest of France, where the requested Authority is the COB, and of Ontario, where the requested Authority is the OSC ;
- (b) where the execution of the request for assistance would require the requested Authority to act in a manner that would violate the laws of France, where the requested Authority is the COB, and of Ontario, where the requested Authority is the OSC ;
- (c) where the information requested concerns facts which originated before the date of effect of this Memorandum ;

(d) where a criminal or a quasi-criminal proceeding has already been initiated in France, where the requested Authority is the COB, and in Ontario, where the requested Authority is the OSC based upon the same facts and against the same persons ;

(e) where the same persons have already been finally sanctioned on the same charges by the competent authorities of France, where the requested Authority is the COB, and of Ontario, where the requested Authority is the OSC ;

Article 5 : Requests for Assistance

1. Requests for assistance must be made in writing and addressed to the requested Authority's contact officer listed in Appendix A. Requests shall be made in or accompanied by a translation into French in the case of a request to the Commission des opérations de bourse and made in or accompanied by a translation into English in the case of a request to the OSC.

2. The request for assistance must specify the following :

(a) a general description of the information sought by the requesting Authority ;

(b) a general description of both the matter which is the subject of the request and the purpose for which the information is sought ;

(c) the persons or entities suspected by the requesting Authority of possessing the information sought, or the places where such information may be obtained, if the requesting Authority is knowledgeable thereof ;

(d) the laws or regulations pertaining to the matter which is the subject of the request, and ;

(e) the desired time period for the reply and, where appropriate, the urgency thereof.

3. In the event of urgency, requests for assistance and replies to such requests may be transmitted by summary or emergency procedures defined by mutual arrangement between the Authorities, provided that they are confirmed in the manner prescribed in paragraphs 1 and 2 of this Article.

Article 6 : Execution of Requests

1. Access to information held in the files of the requested Authority will be provided upon request of the requesting Authority where the request for information was prepared in accordance with Article 5.

2. The requested Authority shall assess the relevant means to be used to obtain the requested information. Within this scope, the requested Authority may take or have evidence taken of any person who has participated directly or indirectly in the facts specified in the request or who has information relating to these facts and may require the production of any relevant document. Evidence shall be taken in the same manner and to the same extent as in investigations or proceedings in France, where the requested Authority is the COB, and in Ontario, where the requested Authority is the OSC.

3. Notwithstanding any other provision herein, any person whose evidence is taken pursuant to a request shall be entitled to the same rights and protections as in investigations or proceedings in France, where the requested Authority is the COB, and in Ontario, where the requested Authority is the OSC, including the right to have counsel present during the taking of the evidence or duly summoned.

Article 7 : Permissible Use of Information

1. The requesting Authority shall use the information furnished solely for purposes stated in the request, with a view to ensuring compliance or enforcement of the provisions of the laws and regulations specified in the request, and for the needs of a criminal, quasi-criminal, administrative, civil or professional proceeding dealing with the violation of the provisions specified in the request.

2. However, if the requesting Authority wishes to use the information furnished for any purpose other than those stated in the request for assistance or other than the needs of a subsequent proceeding, the requesting Authority must first ask permission of the requested Authority. If the requested Authority agrees to the use of the information for purposes other than those stated in paragraph 1 of this Article, it may subject the utilization of the information to certain conditions. If such use of the information is refused by the requested Authority, the Authorities will consult pursuant to Article 9 concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

Article 8 : Confidentiality of Requests

1. Each Authority will keep confidential, to the extent permitted by law, requests made within the framework of this Memorandum, the contents of such requests, and any other matters arising during the operation of this Memorandum, including consultations between the Authorities.

2. In all cases, the requesting Authority will keep confidential, to the extent permitted by law, any information received pursuant to this Memorandum to the same extent as such information would be kept confidential in France, where the requested Authority is the COB, and in Ontario, where the requested Authority is the OSC.

Article 9 : Consultations and Disputes

1. In any case of dispute over the interpretation of this Memorandum, the Authorities will consult with a view to reaching a mutually agreed upon interpretation.

2. The Authorities will keep the operation of this Memorandum under continuous review and will consult with a view to improving its operation and resolving any matters which may arise.

3. The Authorities may conclude further arrangements on such practical measures as may be necessary to facilitate the implementation of this Memorandum.

Article 10 : Effective Date

This Memorandum will come into effect from the date of signature.

Article 11 : Termination

This Memorandum will remain in effect unless terminated by any Authority upon 30 days written notice. Where the requested Authority gives such notice, this Memorandum will continue to have effect with respect to all requests for assistance which are made before the effective date of notification.

APPENDIX A

The requested Authority's contact officer pursuant to Article 5 of the Memorandum is :

For the Commission des opérations de bourse :

Le Chef du Service de l'Inspection

Phone : (33.1) 40.58.65.65

Fax : (33.1) 40.58.65.00

For the Ontario Securities Commission :

Director of Enforcement Branch

Phone : (416) 593-8156

Fax : (416) 593-8240